

Remarks

Claims 4, 5, 7, 17, 18, 20, 21, and 24-33 were pending in the present application prior to amendment herein, and claims 17, 18, 20, 21, 32, and 33 have been canceled. Claims 4, 5, 7, and 24-31 therefore remain pending in this case.

Support for the amendment of claim 4 can be found, for example, in the specification on page 13, line 3 and in the paragraph beginning on page 13, line 14. Therefore, no new matter has been added to this application by the foregoing amendment. The Applicant respectfully requests reconsideration of the present application in view of the foregoing amendment and the Applicant's comments below.

Claim Amendments

Claim 4 has been amended to recite the step of transporting chemical corrosive waste under the chemical resistance conditions set forth in ASTM Standard F1412 through a pipe fitting comprising CPVC. ASTM Standard F1412, submitted herewith as Attachment A, specifies chemical resistance requirements for pipe and fittings for corrosive waste drainage systems. In particular, ASTM Standard F1412 specifies in paragraph 8.3 that pipe and fitting materials must be resistant to acetone (100%), ammonium hydroxide (10% by volume), and methyl alcohol (100%).

Evidence already of record in this case attests to the piping industry's prior belief that CPVC would not meet the chemical resistance standards of ASTM Standard F1412. Such evidence includes Exhibit 3 of the Declaration of Douglas Swingley submitted on March 20, 2006 (a report prepared by the Plastics Pipe Institute dated January 2000), as well as Exhibits 4 and 5 of that Declaration, which are current brochures from providers of CPVC piping. These documents all report that CPVC is not resistant to 100% acetone, 10% ammonium hydroxide, and 100% methyl alcohol. For convenience, the Applicant is submitting herewith as Attachment B the relevant sections of the foregoing exhibits with the relevant passages highlighted. The foregoing evidence supports the novelty and nonobviousness of claim 4 as amended herein.

Rejections under 35 U.S.C. § 102(b)**Rejection of 4, 5, 7, 17, 18, 20, 21, and 24-33 based on Public Use or Sale**

Claims 4, 5, 7, 17, 18, 20, 21, and 24-33 were rejected under 35 U.S.C. §102(b) based upon an asserted public use or sale of the present invention. The Applicant respectfully submits, however, that the declaratory and documentary evidence already of record in this case provides ample evidence that no prior use, sale, or offer for sale of the invention occurred. In paragraph 2 of the Second Declaration of Gregory Peak, the declarant, under penalty of perjury, corrected a statement made in an earlier declaration which was made on information and belief. While the earlier statement was believed to be true at the time it was made, the declarant determined after a subsequent review of corporate sales records that his earlier statement was in fact inaccurate. This declaratory evidence has been ignored, however, and no reason has been provided regarding why it should be ignored.

Moreover, the Applicant has supplied documentary evidence which supports the corrected statement of Gregory Peak, including (1) a copy of the first purchase order for CPVC pipe made in anticipation of a first sale of the LABWASTE™ System for draining corrosive waste and (2) a copy of the purchase order placed for the first brochure advertising the LABWASTE™ System. The Examiner has stated that such evidence does not conclusively establish a date when the invention was first offered for sale. Paragraph 4 of the Declaration of Douglas Swingley dated March 13, 2006, however, does state that no offer for sale of the present invention occurred prior to May 6, 2002, the date of the purchase order for the first brochure advertising the LABWASTE™ System. This statement, made under penalty of perjury, is both supported by the documentary evidence of record in this case and is in accord with the general commercial practice of producing advertising materials for a product before it is offered for sale. The Applicant is in possession of no other evidence of the absence of a prior offer for sale of the present invention and respectfully requests that the foregoing evidence, both documentary and declaratory, be accepted, and that this ground of rejection be withdrawn.

Rejection of Claims 4, 5, 7, 17, 18, 20, 21, and 24-33 over Chemdrain (892-ref U)

Claims 4, 5, 7, 17, 18, 20, 21, and 24-33 were rejected under 35 U.S.C. §102(b) as being anticipated by the Chemdrain reference. This reference was cited as disclosing that CPVC has been used in chemical processing piping applications prior to the present invention. While CPVC has been used for transporting certain chemicals, it was not previously used to transport 100% acetone, 10% ammonium hydroxide, and 100% methyl alcohol under the chemical resistance conditions set forth in ASTM Standard F1412, as described above, nor does the Chemdrain reference teach or suggest such use. In view of this, the Applicant respectfully submits that the pending claims are not anticipated by the Chemdrain reference, and withdrawal of this rejection is respectfully requested.

Rejections under 35 U.S.C. § 103(a)

Rejection of Claims 4, 17, 18, 20, 21, 24, 25, 28, 29, and 33 based on Vanesky

Claims 4, 17, 18, 20, 21, 24, 25, 28, 29, and 33 were rejected under 35 U.S.C. §103(a) as being obvious in view of U.S. Patent No. 5,437,138 to Vanesky. Vanesky discloses fittings used in home water drains. This disclosure does not teach or suggest that CPVC fittings are appropriate for use under the chemical resistance conditions set forth in ASTM Standard F1412, as recited in independent claim 4 herein. Home water drains are not designed to carry acetone, ammonium hydroxide, or methyl alcohol under the conditions set forth in ASTM Standard F1412, for example, and the Vanesky reference therefore does not suggest the method of claim 4. In view of this, the Applicant respectfully requests that the rejections of claims 4 and 17, 18, 20, 21, 24, 25, 28, 29, and 33 as being unpatentable over U.S. Patent No. 5,685,577 to Vanesky be withdrawn.

Rejection of Claims 4, 5, 7, 24, 25, and 27-33 based on Shaefer

Claims 4, 5, 7, 24, 25, and 27-33 were rejected under 35 U.S.C. §103(a) as being obvious in view of U.S. Patent No. 4,457,542 to Shaefer. Shaefer is said to disclose that CPVC fittings are resistant to acids. Shaefer does not suggest, however, that CPVC fittings are resistant to 100% acetone, 10% ammonium hydroxide (a base), and 100% methyl alcohol under the conditions set forth in ASTM Standard F1412, as recited in independent claim 4 herein. In view of this, the Applicant respectfully requests that the rejection of claims 4, 5, 7, 24, 25, and 27-33 as being unpatentable over U.S. Patent No. 4,457,542 to Shaefer be withdrawn.

Rejection of Claims 4, 5, 7, 17, 18, 20, 21 and 24-33 over Condon and Shaefer

Claims 4, 5, 7, 17, 18, 20, 21 and 24-33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,423,345 to Condon in view of U.S. Patent No. 4,457,542 to Shaefer. Condon discloses DWV fittings formed from PVC or ABS for use in conventional plumbing. As discussed above, Shaefer does not suggest that CPVC fittings can transport corrosive waste under the chemical resistance conditions set forth in ASTM Standard F1412, as recited in claim 4, and Condon does not supply this deficiency. Therefore, the combination of Condon and Shaefer fails to teach or suggest the presently claimed methods. In view of this, the Applicant respectfully requests that the rejection of claims 4, 5, 7, 17, 18, 20, 21 and 24-33 as being unpatentable over the Condon and Shaefer patents be withdrawn.

Rejection of Claims 4, 5, 7, 17, 18, 20, 21, 24, 25, and 27-33 over Dietzler

Claims 4, 5, 7, 17, 18, 20, 21, 24, 25, and 27-33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,650,367 to Dietzler. Dietzler is said in the Office Action to disclose the use of CPVC fittings to conduct acids. The Applicant respectfully points out, however, that the teaching in the Dietzler patent relating to the resistance of plastic piping to acids and other chemicals, as found in column 3, lines 31-

39 of the Dietzler patent, specifically refers to piping made from polyvinyl chloride, high density polyethylene, and acrylonitrile butadiene styrene, and not to CPVC piping.

The thrust of the Dietzler invention is the use of internal reinforcement members in pipes for underground piping applications. Dietzler teaches that the particular material to be used in forming pipes depends on the application for which such pipes are to be used: “The clear-cut approach for the design of a pipeline includes selection of the least expensive pipe material which provides the required resistance to attack from specific chemicals to be conveyed in addition to the resistance to the corrosive environment in which the conduit is to be buried,” (column 3, lines 40-45). Some of the typical applications of the Dietzler invention involve transporting only water, such as pavement underdrainage conduits and storm sewers (see column 9, lines 40-42). Prior art teachings relating to the chemical resistance of CPVC suggest that it would be appropriate for such uses, but that it would be inappropriate for use in transporting materials such as 100% acetone, 10% ammonium hydroxide, or 100% methyl alcohol under the conditions set forth in ASTM Standard F1412 (see, e.g., the disclosures highlighted in Attachment B submitted herewith). Nowhere does Dietzler teach or suggest that CPVC would be appropriate for use in transporting materials under the conditions set forth in ASTM Standard F1412. In view of this, the Applicant respectfully requests that the rejection of claims 4, 5, 7, 17, 18, 20, 21, 24, 25, and 27-33 as being unpatentable over the Dietzler patent be withdrawn.

Rejection of Claim 26 over Dietzler in view of Bertram

Claim 26 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,650,367 to Dietzler in view of U.S. Patent No. 6,967,045 to Bertram. Bertram discloses a thermoplastic sheet for lining corroded sewer conduits. The use of CPVC in such structures, as taught by Bertram, is limited to “forming the channel bar or seam 32” (see column 13, lines 13-14), and the Applicant respectfully submits that such use is not directly relevant to CPVC fittings. In any event, the Bertram patent does not teach or suggest that CPVC is appropriate for use in drainage fittings under the chemical resistance conditions set forth in ASTM Standard F1412, as recited in independent claim

4 herein, and thus does not supply the deficiency noted above with respect to the Dietzler patent. In view of this, the Applicant respectfully requests that the rejection of claim 26 as being unpatentable over the Dietzler patent in view of the Bertram patent be withdrawn.

Conclusion

The Applicant believes that all pending claims, claims 4, 5, 7, and 24-31, are in condition for allowance, and a Notice of Allowance is respectfully requested. If, however, there remain any issues which can be addressed by telephone, the Examiner is encouraged to contact the undersigned at the telephone number listed below.

Please charge the fee set forth in 37 CFR §1.17(e) and any other fees due in connection with the present Request for Continued Examination, or charge any overpayment, to Deposit Account No. 19-2090.

Respectfully submitted,

SHELDON & MAK PC

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